D.B. CIVIL WRIT PETITION NO.2876/2007
Shiva Ram Vs. State of Rajasthan & Ors.

Date : 17.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Rajesh Choudhary for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved by the order of learned Civil Judge (Senior Division), Bhilwara dated 26.9.2006 by which the defence of the petitioner defendant in suit for eviction was struck off as he had failed to pay or deposit the provisional rent determined by the Court under Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The power to struck off defence was exercised under Section 13(5) of the said Act. The application of the petitioner to condone delay in depositing the provisional rent within time allowed had been rejected by the learned Trial Judge.

Appeal against the same was also dismissed by the Additional District Judge, Bhilwara vide his order dated 13.3.2007. The fact that the Court had no power to entertain the application under Section 5 and condone the delay in depositing the amount of provisional rent fixed under Section 13(4) of the Act is no more res integra and settled by the decision of the Supreme Court in Nasiruddin and others Vs. Sita Ram Agarwal (2003) 2 SCC 577.

Faced with this situation, the petitioner has preferred this writ petition for challenging the vires of sub-section (5) of Section 13 and sub-section (4) of Section 13 itself inter alia on the ground that it is unreasonable piece of legislation taking away any remedy against a defaulter which is on account of reasons beyond control of the defendant and also restricts the power of the Court to grant relief.

This contention appears to be out of despair. The ground of unreasonableness of law itself stand negatived by the Court in Nasiruddin's case referred to

above in which the Court said that the rent control statutes are welfare legislation not entirely beneficial enactment for the tenant but also for the benefit of landlord. Therefore, the balance has to be struck while interpreting the provisions of the Rent Act. It is while considering the balance the interpretation of Section 13 (4), keeping in view the object of the Act, the court held the provisions of deposit within the time under Section 13(5) and the consequence to follow of striking out of defence were held to be the correct interpretation. In other way, it can be said that the provisions of the Act keeping in view the object and considering the balance between the benefit extended to the tenant and the landlord the interpretation which has been referred by the Supreme Court is that the word “shall” which is ordinarily imperative in nature, has been used in sub-section (4) of Section 13. The power of the Court has also been limited to the extent that it can extend time for such deposit not exceeding three months and so far as the deposit of monthly rent is concerned, by fifteen days. The court's power, therefore, is restricted. In case the tenant deposits the provisional rent as determined

by the Court within the stipulated period the tenant is relieved of the threat of an eviction decree and thus, the court has not been conferred with any power to relax the period of deposits but the period up to which the default is relaxable has also been regulated. Keeping in view that there is a power of relaxation upto limited extent the Court declined to interpret the statute to give unlimited leeway relax delay in deposit of provisional rent determined under Section 13(4) of the Act. The Court observed that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences therefore are specified.

The power of the Court upto which relaxation can be granted in failure of tenant in discharging his obligation has been specified and consequences of non-compliance within specified time has also been provided. Considering these provisions, the Court held that Section 5 of the Limitation Act, 1963 to condone the delay in

making deposit beyond prescribed time is not applicable to condone delayed act of deposit of the rent beyond time prescribed under the Act.

If this be the balanced interpretation of computing the benefit conferred under the Act, the provision cannot be held to be unreasonable by any stretch of imagination.

Therefore, on merit of the order passed by the two courts below we do not find any merit. The same is governed by the decision of the Supreme Court and we no do not find any merit in challenge to vires of Section 13(5) and 13(4) too.

The petition is accordingly, dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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